

Decision **DRAFT DECISION OF ALJ PATRICK** (Mailed 2/28/03)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company
to establish Market Values for and to Sell its
Generation-Related Assets Located in Rodeo,
Martinez and Antioch Pursuant to Public Utilities
Code Section 367(b) and 851.

Application 00-05-032
(Filed May 15, 2000)

**OPINION DISMISSING APPLICATION
UNDER PUBLIC UTILITIES CODE SECTION 377**

I. Summary

Pacific Gas and Electric Company (PG&E) seeks authorization to market value by sale certain generation-related parcels of land in Rodeo, Martinez, and Antioch. The Commission concludes that Pub. Util. Code § 377, as amended by Assembly Bill (AB) 6X, bars the sale of these generation-related assets until the year 2006. The application is dismissed without prejudice and the proceeding is closed.

II. Procedural History

The application was filed on May 15, 2000, and was noticed in the Commission's Daily Calendar on May 23, 2000. In Resolution ALJ 176-3040, dated June 8, 2000, the Commission preliminarily categorized this proceeding as ratesetting and preliminary determined that hearings were not necessary. No protests were received regarding the proposed sale of these properties; therefore, a public hearing is not required and, we affirm the determinations made in Resolution ALJ 176-3040.

Since § 377 was enacted after this application was filed, the assigned administrative law judge (ALJ) directed PG&E to file a brief addressing the application of § 377 to the proposed land sales. On August 12, 2002, PG&E filed its brief and this matter was submitted for decision based on the pleadings

III. Factual Background

PG&E's application includes the three properties described below:

A. The Rodeo Property

PG&E purchased this 23.8-acre property in 1939 and built a 100-megawatt (MW) steam generation plant on the site. PG&E operated the generation facility until 1987, and removed the generation plant in 1997. The site is currently vacant except for a switchyard. PG&E proposes to sell approximately 22 acres of the property to the Tosco Oil Company and will retain approximately 1.8 acres containing the switchyard. PG&E states that with the exception of the switchyard, the property is not necessary and useful to PG&E's utility distribution operations.

B. The Martinez Property

PG&E purchased this 11-acre property in the late 1930s and built a 40 MW steam generation plant on the site. PG&E operated the generation facility until 1985, and removed it in 1996. PG&E proposes to sell approximately seven acres to Equilon Enterprises LLC. and will retain approximately four acres containing a switching station, substation, gas meter and valve station, and an access road. PG&E states that with the easements it is retaining, it will not need to maintain ownership in fee of the property to be sold.

C. The Antioch Property

In 1992, PG&E acquired this 12-acre parcel of land in Antioch to settle a legal claim related to particulate fallout from the Contra Costa Power Plant, which PG&E has since sold. The property, also known as the “Los Medanos” property, is currently leased to Carone Management and Investment Inc. (Carone), which operates a recreational vehicle storage facility there. Carone has submitted a bid for the property.

IV. Discussion

In considering this application, we are limited by § 377, which reads:

The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no facility for the generation of electricity owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers.

Thus, before we may consider the merits of this application, we must address the threshold question—does § 377 bar the proposed land transactions?

The assets in question here were owned by PG&E prior to January 1, 1997. We must determine whether the assets that PG&E wants to dispose of are a facility or facilities for the generation of electricity. If so, such assets may not be disposed of prior to January 1, 2006. The obvious example of a facility used for the generation of electricity would be a power plant, which literally is a facility

that generates electricity. Section 377 clearly bars disposal of power plants owned by public utilities.¹

But we are left with the question of whether § 377 only bars disposal of a power plant, itself, or whether it has a broader scope. We must determine whether a facility for the generation of electricity includes more than just the power plant. For example, the land on which a power plant sits does not actually generate electricity, nor would it appear to be a facility. Does this mean that a utility could sell the land under a power plant, while keeping the power plant, itself?

Fortunately, the statute itself provides further guidance on this issue. The statute says that “public utility generation assets” are to remain dedicated to service for the benefit of California ratepayers. “Generation assets” is a term of art. This Commission has defined generation assets as including “nonplant physical assets.” (D.95-12-063, as modified by D.96-01-009, pp.50-51.) PG&E previously argued, and the Commission conceptually agreed, that generation assets include land. (D.97-11-074, pp. 63-64.)

The Uniform System of Accounts (USOA) of the Federal Energy Regulatory Commission (FERC) provides further confirmation that generation assets include more than just the power plant itself.² Electric Plant Account 310 includes the cost of land and land rights associated with steam generation, and Account 330 includes land and land rights for hydroelectric generation.

¹ This is confirmed by the subsequent enactment of § 377.1, which expressly exempted six hydroelectric plants from the restrictions of § 377.

² Utilities conform their records to the USOA. See, e.g. *Resource*, 2nd Edition 1992.

Accounts 311 and 331 include the respective costs of structures and improvements for steam and hydroelectric generation, while Account 332 includes the cost of reservoirs, dams, and waterways used for hydroelectric generation. In addition, Account 335 includes the cost of miscellaneous power plant equipment for hydroelectric generation, including equipment such as boats, barges, etc., and, Account 342 includes the cost of full oil pipelines and storage equipment.

To the extent there is any potential conflict between the phrases “facility for the generation of electricity” and “generation asset,” that conflict can, and accordingly must, be harmonized. (See, e.g. *Wells v. Marina City Properties, Inc.* (1981) 29 Cal. 3d 781, 788; *Louisiana-Pacific Corp. v. Humboldt Bay Municipal Water District* (1982) 137 Cal. App. 3d 152, 156.) Rather than disregarding the words “generation assets” and their well-established meaning, we construe the words “facility for generation of electricity” to have the same breadth.

The PG&E brief does not include this line of statutory interpretation. Instead, PG&E argues that § 377 does not bar the land transfers at issue, primarily because none of the properties have generation plants on them, most of the land is undeveloped and the developments that do exist are minor ones that are not used to generate electricity. While these are accurate observations, it is also true that each parcel of land has been included as assets in PG&E’s generation rate base for various periods prior to January 1, 1997. PG&E’s brief does not discuss the long-established meaning of the term “generation assets”.

PG&E’s brief assumes that the differing terminology in the last two sentences of § 377 gives rise to ambiguity. PG&E argues that we must use extrinsic sources of legislative intent as a basis for, in essence, eliminating the words “generation assets” from the statute. At a minimum, PG&E’s argument

would require us to ignore the widely recognized regulatory meaning of those words. Instead, we will adhere to the well-established meaning of the term “generation assets” and conclude that the statute as written is not ambiguous. The assets that are the subject of these applications fall within the standard definition of generation assets. Section 377 bars not just the disposal of power plants, but also the generation assets at issue here. Accordingly, we are legally barred from authorizing PG&E to dispose of the Rodeo, Martinez, and Antioch properties since § 377 does not provide us with discretion to exempt some kinds or classes of generation assets from its reach.

We note that recently enacted § 377.1 creates an express exemption from § 377 for the particular utility assets named in that new statute. Section 377.1 illustrates the legislative prerogative to amend statutes or to create express exemptions from them, authority that this Commission lacks. Parties may wish to explore the availability of legislative remedies with respect to the utility assets at issue in this proceeding.

Accordingly, we dismiss the application without reaching the merits.

V. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

VI. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Bertram D. Patrick is the assigned ALJ in this proceeding.

Findings of Fact

The land at issue in these applications have been included in PG&E's generation rate base since prior to January 1, 1997.

Conclusions of Law

1. Commission precedent defines "generation assets" to include nonplant physical assets and land.

2. The Uniform System of Accounts established by FERC confirms that generation assets include more than power plants, since separate accounts exist for elements ranging from the cost of land and land rights for hydroelectric generation to the cost of miscellaneous power plant equipment, such as boats and barges.

3. Section 377 bars the Commission from authorizing PG&E to dispose of the Rodeo, Martinez, and Antioch properties.

4. Today's order properly dismisses PG&E's application.

5. In order to eliminate uncertainty in the parties' business dealings, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 00-05-032 is dismissed without prejudice under Pub. Util. Code § 377.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.